

STATE OF MAINE
WORKERS' COMPENSATION BOARD

ABUSE INVESTIGATION UNIT
AIU#

STATE OF MAINE
WORKERS' COMPENSATION BOARD

v.

THE HANOVER INSURANCE COMPANY

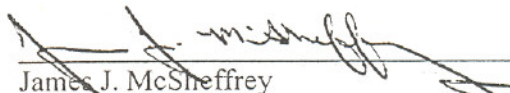
CONSENT DECREE

NOW COME the parties and agree as follows:

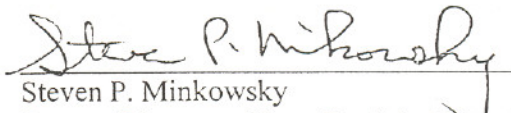
1. That John Allen alleged a December 1, 1998 work-related injury while employed at Pinehirst Tent & Trailer.
2. That Mr. Allen gave notice of incapacity from work for his alleged injury on December 1, 1998.
3. That Mr. Allen was compensated for his alleged period of incapacity on December 7, 1998 and January 19, 1999.
4. That the subsequent payment to Mr. Allen was made forty-two (42) days after his notice of a claim for incapacity.
5. That pursuant to 39-A M.R.S.A. §205(3) a penalty of \$250.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Mr. Allen's right to seek any weekly compensation benefits that he is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §205(3), The Hanover Insurance Company shall be assessed a penalty of \$250.00 payable to Mr. Allen.


Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
Workers' Compensation Board

STATE OF MAINE
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THE HANOVER INSURANCE COMPANY


CONSENT DECREE

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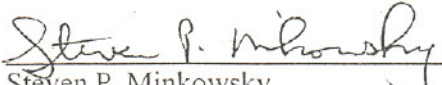
1. That Carol Chick alleged a July 31, 1998 work-related injury while employed at Bar Harbor Hotel.
2. That Ms. Chick gave notice of incapacity from work for her alleged injury on August 1, 1998.
3. That Ms. Chick was compensated for her alleged period of incapacity on September 24, 1998 and April 27, 1999.
4. That the subsequent payment to Ms. Chick was made two hundred fifteen (215) days after her notice of a claim for incapacity.
5. That pursuant to 39-A M.R.S.A. §205(3) a penalty of \$1,500.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Ms. Chick's right to seek any weekly compensation benefits that she is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §205(3), The Hanover Insurance Company shall be assessed a penalty of \$1,500.00 payable to Ms. Chick.

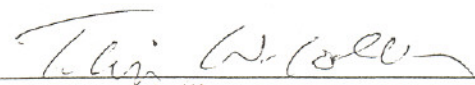
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
Workers' Compensation Board

STATE OF MAINE
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STATE OF MAINE
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THE HANOVER INSURANCE COMPANY


CONSENT DECREE

NOW COME the parties and agree as follows:


1. That Bernadette Lockard alleged an February 11, 1998 work-related injury while employed at Grampa's Workshop.
2. That Ms. Lockard gave notice of incapacity from work for her alleged injury on April 25, 1998.
3. That Ms. Lockard was compensated for her alleged period of incapacity on August 7, 1998.
4. That the payment to Ms. Lockard was made sixty (60) days after her notice of a claim for incapacity.
5. That pursuant to 39-A M.R.S.A. §205(3) a penalty of \$1,150.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Ms. Lockard's right to seek any weekly compensation benefits that she is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §205(3), The Hanover Insurance Company shall be assessed a penalty of \$1,150.00 payable to Ms. Lockard.

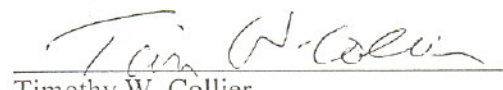
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
Workers' Compensation Board

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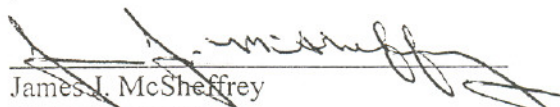
CONSENT DECREE

NOW COME the parties and agree as follows:

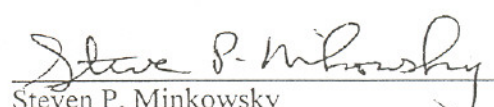
1. That Robert Malenfant alleged a January 2, 1998 work-related injury while employed at Malenfant's Burner Service.
2. That Mr. Malenfant gave notice of incapacity from work for his alleged injury on January 5, 1998.
3. That a provisional payment was issued to Mr. Malenfant on January 14, 1998; and that the provisional payment was not corrected until March 19, 1998.
4. That the subsequent payment to Mr. Malenfant was made sixty-four (64) days after the provisional payment was issued.
5. That pursuant to 39-A M.R.S.A. §205(3) a penalty of \$1,350.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Mr. Malenfant's right to seek any weekly compensation benefits that he is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §205(3), The Hanover Insurance Company shall be assessed a penalty of \$1,350.00 payable to Mr. Malenfant.


Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
Workers' Compensation Board

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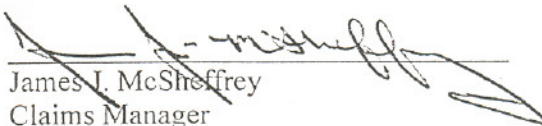
CONSENT DECREE

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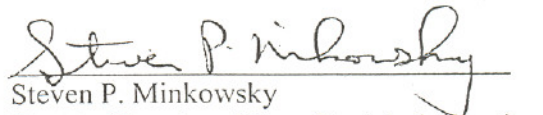
1. That Isabella Wiand alleged an August 17, 1998 work-related injury while employed at Coopers Mills Nursing Home.
2. That Ms. Wiand gave notice of incapacity from work for her alleged injury on January 20, 1999.
3. That Ms. Wiand was compensated for her alleged period of incapacity on May 17, 1999.
4. That the payment to Ms. Wiand was made eighty (80) days after her notice of a claim for incapacity.
5. That pursuant to 39-A M.R.S.A. §205(3) a penalty of \$1,500.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Ms. Wiand's right to seek any weekly compensation benefits that she is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §205(3), The Hanover Insurance Company shall be assessed a penalty of \$1,500.00 payable to Ms. Wiand.

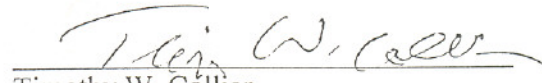
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
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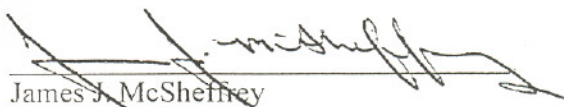
CONSENT DECREE

NOW COME the parties and agree as follows:

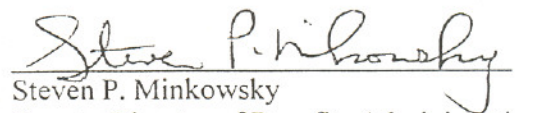
1. That David Shryock alleged an August 28, 1998 work-related injury while employed at Cellular One.
2. That a Decree in the case of Shryock v. Cellular One/Hanover was issued on January 13, 2000.
3. That payment pursuant to the Decree was not issued until February 1, 2000.
4. That the payment to Mr. Shryock was made six (6) days late.
5. That pursuant to 39-A M.R.S.A. §324(2)(A) a penalty of \$1,200.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Mr. Shryock's right to seek any weekly compensation benefits that he is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §324(2)(A), The Hanover Insurance Company shall be assessed a penalty of \$300.00 payable to Mr. Shryock and \$900.00 payable to the Maine Workers' Compensation Board.

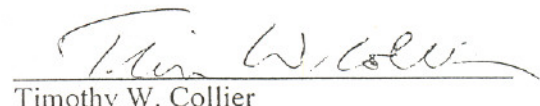
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
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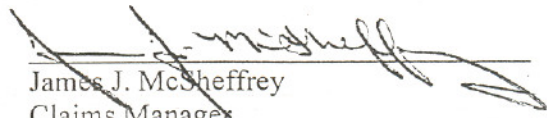
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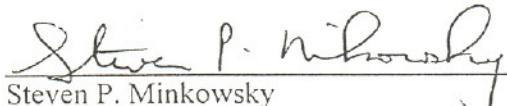
1. That Deborah Batlis alleged a June 14, 1998 work-related injury while employed at Country Manor Nursing Home.
2. That a Mediation Agreement in the case of Batlis v. Country Manor Nursing Home/Hanover was signed on September 21, 1998.
3. That payment pursuant to the Mediation Agreement was not issued until October 7, 1998.
4. That the payment to Ms. Batlis was made six (6) days late.
5. That pursuant to 39-A M.R.S.A. §324(2)(A) a penalty of \$750.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Ms. Batlis' right to seek any weekly compensation benefits that she is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §324(2)(A), The Hanover Insurance Company shall be assessed a penalty of \$300.00 payable to Ms. Batlis and \$450.00 payable to the Maine Workers' Compensation Board.

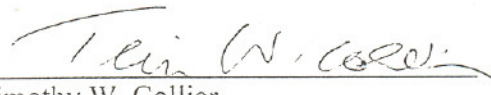
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
Workers' Compensation Board

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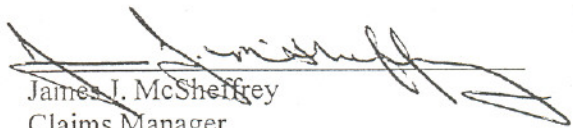
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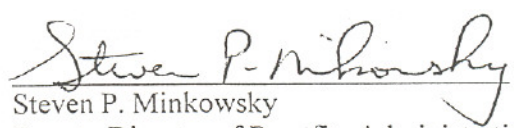
1. That John Little, Jr. alleged a September 8, 1998 work-related injury while employed at Cyr Construction Company.
2. That a Decree in the case of Little v. Cyr Construction Company/Hanover was issued on September 21, 1999.
3. That payment pursuant to the Decree was not issued until October 6, 1999.
4. That the payment to Mr. Little was made two (2) days late.
5. That pursuant to 39-A M.R.S.A. §324(2)(A) a penalty of \$400.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Mr. Little's right to seek any weekly compensation benefits that he is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §324(2)(A), The Hanover Insurance Company shall be assessed a penalty of \$100.00 payable to Mr. Little and \$300.00 payable to the Maine Workers' Compensation Board.

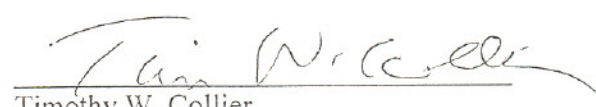
Dated: 1/30/01


James I. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
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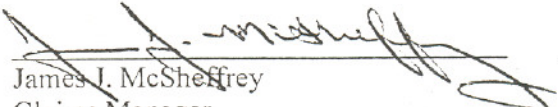
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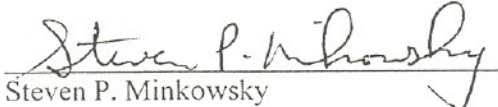
1. That Sherry Rodgers alleged an October 29, 1998 work-related injury while employed at New Balance Shoe.
2. That a Mediation Agreement in the case of Rodgers v. New Balance Shoe/Hanover was issued on June 30, 1999.
3. That payment pursuant to the Mediation Agreement was not issued until July 16, 1999
4. That the payment to Ms. Rodgers was made six (6) days late.
5. That pursuant to 39-A M.R.S.A. §324(2)(A) a penalty of \$750.00 is warranted.
6. That nothing in this agreement shall be construed as a waiver of Ms. Rodgers' right to seek any weekly compensation benefits that she is or may be entitled to.

WHEREFORE, pursuant to 39-A M.R.S.A. §324(2)(A), The Hanover Insurance Company shall be assessed a penalty of \$300.00 payable to Ms. Rodgers and \$450.00 payable to the Maine Workers' Compensation Board.

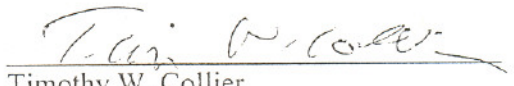
Dated: 1/30/01


James J. McSheffrey
Claims Manager
The Hanover Insurance Company

Dated: 2-01-01


Steven P. Minkowsky
Deputy Director of Benefits Administration
Workers' Compensation Board

Dated: 2/1/01


Timothy W. Collier
Supervisor of the Abuse Investigation Unit
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CONSENT DECREE

NOW COME the parties and agree as follows:

1. That the following forms were requested from The Hanover Insurance Company for purposes of an audit pursuant to 39-A M.R.S.A. §153(9):

Employee	Date of Injury	Forms Not Filed
Elsie Chapman	03/12/98	WCB-1, First Report of Occupational Injury or Disease
Diana Grass	04/07/98	WCB-1, First Report of Occupational Injury or Disease
David Turne	04/17/98	WCB-1, First Report of Occupational Injury or Disease
Joseph Morse	04/16/98	WCB-1, First Report of Occupational Injury or Disease
Donald Black	04/21/98	WCB-1, First Report of Occupational Injury or Disease
Garrett Duffy	02/01/98	WCB-1, First Report of Occupational Injury or Disease
John Pribram	05/20/98	WCB-1, First Report of Occupational Injury or Disease
Louis Lafreniere	05/05/98	WCB-1, First Report of Occupational Injury or Disease
Sophie Cormier	06/25/98	WCB-1, First Report of Occupational Injury or Disease
Steven Sines	06/24/98	WCB-1, First Report of Occupational Injury or Disease

Pauline Flores	10/01/98	WCB-1, First Report of Occupational Injury or Disease
Timothy Bybee	10/26/98	WCB-1, First Report of Occupational Injury or Disease
Michael St. Pierre	09/28/98	WCB-1, First Report of Occupational Injury or Disease
Eric Adams	06/24/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
John Allen	12/01/98	WCB-11, Statement of Compensation Paid
Edgar Beaulieu, Jr.	03/21/98	WCB-11, Statement of Compensation Paid
Louise Beeman	12/01/98	WCB-11, Statement of Compensation Paid
Jenny Bernier	01/01/98	WCB-11, Statement of Compensation Paid
Jackson Cairns	01/21/98	WCB-4, Discontinuance or Modification of Compensation WCB-11, Statement of Compensation Paid
Carl Chipman	01/14/98	WCB-11, Statement of Compensation Paid
Debora Combs	11/01/98	WCB-11, Statement of Compensation Paid
Dawn Coolong	02/09/98	WCB-11, Statement of Compensation Paid
Leesa Crowder	08/10/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement
John Currier	03/02/98	WCB-4, Discontinuance or Modification of Compensation
Gary Dayton	10/27/98	WCB-11, Statement of Compensation Paid
Robert Dowling	11/25/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-4, Discontinuance or Modification of Compensation
Michael Dupuis	07/28/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement
Kevin Gagnon	01/14/98	WCB-11, Statement of Compensation Paid

Stephen Gray	07/28/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement
Claude Grenier	01/25/98	WCB-11, Statement of Compensation Paid
Derek Hamel	05/15/98	WCB-11, Statement of Compensation Paid
Kathy Hamor	12/05/98	WCB-2, Wage Statement
Patricia Johnson	04/08/98	WCB-11, Statement of Compensation Paid
Kinney Heath	05/26/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement
Daniel Labbe	08/10/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-4, Discontinuance or Modification of Compensation
Jason L'Heureux	03/27/98	WCB-11, Statement of Compensation Paid
John Little, Jr.	09/08/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-3, Memorandum of Payment WCB-4, Discontinuance or Modification of Compensation
Bernadette Lockard	02/11/98	WCB-11, Statement of Compensation Paid
Bernice Lombard	01/07/98	WCB-11, Statement of Compensation Paid
Robert Malenfant	01/02/98	WCB-11, Statement of Compensation Paid
Barbara Matthews	02/28/98	WCB-11, Statement of Compensation Paid
Doris McNeil	09/10/98	WCB-3, Memorandum of Payment WCB-4, Discontinuance or Modification of Compensation
Vernley McVay	06/09/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement
Edwin Meeks	10/02/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement

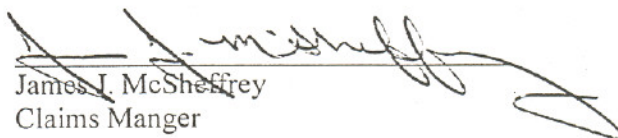
Perry Morneau	11/05/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement
John Morse	03/28/98	WCB-11, Statement of Compensation Paid
Jeffrey Murray	12/30/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Rena Ouellette	12/09/98	WCB-11, Statement of Compensation Paid
Thomas Page	02/09/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Marie Paul	02/19/98	WCB-11, Statement of Compensation Paid
Robert Pelchat	11/16/98	WCB-11, Statement of Compensation Paid
Ralene Pena	02/08/98	WCB-11, Statement of Compensation Paid
David Philbrook	01/13/98	WCB-11, Statement of Compensation Paid
Lucien Potvin	06/24/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement
Lisa Pratt	01/14/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Michael Prebit	03/28/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Linda Robbins	03/12/98	WCB-11, Statement of Compensation Paid
Sherry Rodgers	10/29/98	WCB-2, Wage Statement WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Debra Russell	02/03/98	WCB-4, Discontinuance or Modification of Compensation WCB-11, Statement of Compensation Paid
Andrew St. Louis	01/08/98	WCB-11, Statement of Compensation Paid
Donald Schafer	03/31/98	WCB-11, Statement of Compensation Paid

William Shapleigh	05/21/98	WCB-11, Statement of Compensation Paid
David Shryock	08/28/98	WCB-2, Wage Statement
Shaye Stanwood	06/05/98	WCB-11, Statement of Compensation Paid
Julie Stinson	06/23/98	WCB-2, Wage Statement
Linda Swain	06/04/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Bryan Swallow	01/13/98	WCB-11, Statement of Compensation Paid
Timothy Tanner	11/30/98	WCB-11, Statement of Compensation Paid
Scott Thayer	12/28/98	WCB-11, Statement of Compensation Paid
John Vallee	12/28/98	WCB-2A, Schedule of Dependent(s) and Filing Status Statement WCB-11, Statement of Compensation Paid
Brian Voss	11/13/98	WCB-11, Statement of Compensation Paid
Michael Wallace	11/03/98	WCB-11, Statement of Compensation Paid
Monica White	03/11/98	WCB-11, Statement of Compensation Paid
Pamela White-Glynn	02/14/98	WCB-11, Statement of Compensation Paid
Isabella Wiand	08/17/98	WCB-3, Memorandum of Payment WCB-4, Discontinuance or Modification of Compensation
Wanda Wieninger	10/28/98	WCB-11, Statement of Compensation Paid

2. That the forms listed above were not timely filed.
3. That the failure to file the foregoing forms represents one hundred two (102) separate violations of 39-A M.R.S.A. §357(1) and §360(1)(B).
4. That nothing in this agreement shall be construed as a waiver of the Workers' Compensation Board's right to seek additional penalties pursuant to 39-A M.R.S.A. §359(2) or 39-A M.R.S.A. §360(2) or both sections.

WHEREFORE, pursuant to 39-A M.R.S.A. §360(1)(B), a civil forfeiture of \$100.00 shall be assessed for each of the foregoing one hundred two (102) violations for a total penalty of \$10,200.00.

Dated:

1/30/01
James J. McSheffrey

Claims Manager

The Hanover Insurance Company

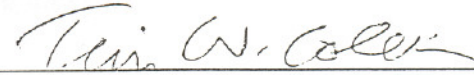
Dated:

2-01-01
Steven P. Minkowsky

Deputy Director of Benefits Administration

Workers' Compensation Board

Dated:

2/1/01
Timothy W. Collier

Supervisor of the Abuse Investigation Unit

Workers' Compensation Board

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RE: State of Maine v. Hanover Insurance Company

DATE MAILED: 12/31/02

STATE OF MAINE
WORKERS' COMPENSATION BOARD
ABUSE INVESTIGATION UNIT
(AIU)
v.
HANOVER INSURANCE COMPANY
(Hanover)

Pending before this hearing officer is the Workers' Compensation Board Abuse Investigation Unit's complaint against Hanover Insurance Company pursuant to 39-A M.R.S.A. §359(2). The AIU is represented by Assistant General Counsel Timothy Collier, Esq.; Hanover is represented by Allan Muir, Esq. and John Aromondo, Esq.

In rendering this decision, I have considered testimony of Stephen Minkowsky, Noreen Lyons, Marlene Swift, John Rohde, Shel McAfee, Michael Nadeau, James McSheffrey, Eve Alexis and Lynn Williamson heard on July 25 and 26, 2002, September 19 and 20, 2002 and October 21-25, 2002. In addition, I have received into evidence twenty-five AIU exhibits and thirty-seven Hanover exhibits, as well as two documents whose admission was stipulated by the parties, as set

forth in Appendix A. I also have taken administrative notice of Board filings in the 99 case files which were the subject of the audit.

I. Background

In December 1999, the Board's audit division, part of the Monitoring, Audit and Enforcement (or "MAE") program, began an audit of Hanover's 1998 workers' compensation claims files. Ninety-nine files¹ were randomly selected from the over 400 indemnity claims Hanover processed in 1998. Prior to reviewing Hanover's files at its Portland office, audit manager Michael Nadeau and auditor Marlene Swift reviewed the Board's files for these claims, and prepared audit worksheets to assist them in their work.

After reviewing Hanover's files in Portland, Ms. Swift asked Hanover for additional information regarding numerous files. Hanover claims adjuster Eve Alexis responded, and several exchanges ensued between the auditors and Hanover's adjusters to resolve some concerns raised by the auditors. On May 8, 2000, the auditors issued a preliminary audit report. Hanover filed responses to this report on July 19 and September 15, 2000.

On November 7, 2000, the audit division issued its final audit report. Hanover entered into a number of consent decrees acknowledging violations of the Act, and agreed to a corrective action plan to improve its future compliance.

On January 18, 2001, Steven Minkowsky, the Board's Deputy Director of Benefits Administration, who heads the MAE program, referred Hanover to the AIU for possible violations of 39-A M.R.S.A. §359(2), charging that Hanover had engaged in a pattern of questionable claims handling techniques.

¹ The auditors intended to sample 100 files, but for reasons not relevant to this case, they actually audited 99 files.

II. Statutory interpretation

The governing statute in this case, 39-A M.R.S.A. §359(2), provides as follows:

In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.

The Board has not issued Rules defining “pattern of questionable claims handling techniques” or identifying activities which would fall into this category.

Contrary to Hanover’s argument, I do not believe the phrase “pattern of questionable claims handling techniques” is constitutionally void for vagueness. Instead, the plain meaning of these terms, as defined in standard dictionaries and informed by common sense, provides an adequate basis for applying §359(2).

In fact, the parties cite similar definitions of each of these terms from Black’s Law Dictionary and Webster’s Collegiate Dictionary. “Pattern” is defined in Black’s Law Dictionary (6 ed. 1991) as “a reliable sample of traits, acts or observable features characterizing an individual...” Similarly, Webster’s New World Dictionary of the English Language (2nd College Ed., 1980) defines “pattern” as a “grouping or distribution, as of a number of bullets fired at a mark”. Both parties cite as an example a “pattern of racketeering activity” under the federal RICO statute. Black’s notes that, for purposes of the federal RICO statute, a pattern “includes two or more related criminal acts...” While Hanover argues that a “pattern” suggests a “widespread” incidence of related techniques, the AIU suggests that two or more instances of a given act result in a “pattern”.

In my view, the number of techniques needed to form a pattern may depend on a number of factors, including the nature of the technique and the frequency of its application.

The parties also agree that the word "questionable" means something less than "unlawful". Webster's defines "questionable" as something "...that can or should be questioned or doubted" or something "problematic." Throughout Maine's statutes, the Legislature has instructed regulatory agencies to report or investigate activities deemed "questionable" by such agencies. Apparently, the Legislature wished to give regulatory agencies broad authority to deal with "questionable" practices within their respective jurisdictions. While an activity need not be "unlawful" to be "questionable," techniques which are "imperfect" or "inaccurate" are not necessarily "questionable".

"Claims handling", by its plain meaning, refers to any activity involved in processing workers' compensation claims. Contrary to Hanover's argument that "claims handling" is limited to what adjusters in its Portland office do in order to pay claims under the Act, the term is broad enough to include filing required forms and providing required information, which Hanover considers a separate data collection and processing function. Because forms such as the WCB-11 (Statement of Compensation Paid) provide information to injured workers about their claims and to the Board which monitors claims activity, these forms, as well as all other forms which provide information about a specific claim, are part of the "claims handling" process.

"Technique" is defined as the manner and method of accomplishing a desired end. Contrary to Hanover's argument, there is no explicit or implicit element of intent in the statute. If the desired end is prompt payment of workers' compensation claims and accurate reporting of claims activity to the Workers' Compensation Board, Hanover's manners and methods of

accomplishing such ends are "techniques". Contrary to the interpretation of some of the Board's witnesses, the word "technique" used in the context of this statute implies a habitual or routine way of doing things, rather than an isolated method applied in a particular case.

While each of these separate terms has a straightforward, common sense meaning, the phrase "pattern of questionable claims handling techniques" must be considered in its entirety, and in the context of the statute as a whole, in order to apply it in the manner intended by the Legislature. As with other portions of Maine's statutes which authorize agencies to investigate and deal with patterns of questionable practices, §359(2) apparently was intended to allow the Workers' Compensation Board to oversee the performance of regulated entities, punish violators and correct practices which negatively affect the workers' compensation system.

III. Alleged Questionable Techniques

A. Timely and appropriate form filing

The most frequent and egregious problems identified by the audit relate to Hanover's failure to file forms in a timely manner. In particular, Hanover admitted that its computer program for generating WCB-11 statement of compensation forms was faulty.

Hanover entered into consent agreements establishing that 102 forms were filed late in 76 separate cases (most of these forms were WCB-11s). In addition to acknowledging late filings in consent agreements, Hanover entered into a corrective action plan acknowledging a problem with its computer program generating untimely and inaccurate WCB-11s.

The problem with WCB-11 filings was a longstanding one. In 1994, Hanover and the Board discussed the problem of missing WCC-4 reports (pre-cursors to the current WCB-11 forms). Throughout 1995, Hanover and the Board communicated regarding Hanover's continuing

problems with its forms. In June 1997, Marlene Swift notified Hanover that the computer program for filing WCB-11s apparently was still malfunctioning. The audit which began in December 1999 identified a systemic problem in filing WCB-11s, a problem that Hanover had been aware of for several years. Continuing to rely on a computer program to generate WCB-11s, when Hanover had known for years that there were problems with this system, is a questionable technique.

The WCB-11 problem was the most widespread, but the audit team identified numerous examples of other forms that routinely were filed late. WCB-3 Memorandum of Payment forms were filed beyond the required 14 days in almost two-thirds of the 1998 cases. WCB-4 Discontinuance or Modification of Compensation forms were filed more than 14 days after the triggering event, again in almost two-thirds of the cases. In more than half of the cases, the WCB-1 First Reports of Injury, WCB-2 Wage Statements (generally filed by employers) and the WCB-2A Schedules of Dependents (generally filed by employees) were late. While filing some of these forms was the responsibility of its insureds, Hanover bears the responsibility for overseeing and ensuring compliance by insureds. This responsibility may involve educating its insureds about filing requirements, reminding them of upcoming deadlines and submitting forms to the Board when the employer has not, will not or cannot do so. The large number of late filings by employers suggests that Hanover failed to properly monitor its insureds with regard to their filing obligations. Relying on its insureds to file WCB-1s and WCB-2s, without adequately monitoring their compliance, is a questionable technique.

B. Average weekly wage and benefit calculations

1. Failure to verify employers' calculations

The auditors discovered a number of errors relating to calculation of employees' average weekly wages and benefit amounts. Many of these errors can be traced to Hanover's reliance on employers to calculate average weekly wages, rather than adjusters performing their own calculations. While employers have an obligation under 39-A M.R.S.A. §303 to "report the average weekly wages or earnings of the employee, together with any other information required by the Board," Hanover must make prompt and direct compensation payments based on the employee's average weekly wage. If the employer were out of business or otherwise unable to complete a wage statement, the insurer would need to perform this task in order to meet the statutory requirement. 39-A M.R.S.A. §303, Board Rule Ch. 1, Section 5(2), and the instructions on the WCB-2 form, suggest that insurers share responsibility with employers in making sure wage statements are filed.

Even if an insurer is only secondarily responsible or not responsible at all for filing WCB-2 wage statements, an insurer's obligation to make prompt and direct payment of compensation under 39-A M.R.S.A. §205 necessitates an insurer's review of this form. An insurance adjuster who routinely deals with average weekly wage calculations is more likely to correctly apply 39-A M.R.S.A. §102(4)'s formulas for calculating average weekly wage than an employer who may never before have dealt with a workers' compensation claim. While it makes sense for Hanover to rely on the raw data provided by an employer regarding an employee's weekly earnings, Hanover should not have relied on the employer's interpretation of the Act in calculating the average weekly wage or compensation rate. While Hanover's adjusters sometimes used their own judgment, or the assistance of counsel, to

determine an average weekly wage, they often relied on calculations submitted by employers. Failing to independently calculate average weekly wages, or at least verify the accuracy of an employer's calculations, is a questionable technique.

2. Specific calculation problems

The auditors identified a number of cases in which errors were made in calculating employees' average weekly wages or compensation rates. While some of these involved questionable claims handling techniques, others did not.

In several cases, when an employee's earnings remained stable over a period of weeks, Hanover nevertheless applied 39-A M.R.S.A. §102(4)(B) and divided the total earnings by the number of weeks worked. This technique is improper, as 39-A M.R.S.A. §102(4)(A) should be applied. While the Board's instructions for completing the WCB-2 wage statement make no reference to subsection A's treatment of wages which do not vary from week to week, Hanover's adjusters are responsible for applying the law, not simply following the instructions in the forms manual (which an employer is likely to do in completing the WCB-2 form). Dividing total earnings by the number of weeks worked in all cases, without first evaluating whether an employee's wages vary from week to week, is a questionable technique. It also is a questionable technique to rely on an employer's average weekly wage calculation which divides annual earnings by 52, when the wage statement shows earnings which do not vary from week to week.

In other cases, an employee's week of hire was included in the average weekly wage calculation, although doing so reduced the average weekly wage contrary to 39-A M.R.S.A. §102(4)(B). Hanover admits that including the week of hire is improper under the statute. The date of hire is identified on the WCB-1 (First Report of Injury), and that information therefore is

available to Hanover's adjusters. Including the week of hire contrary to §102(4)(B), or adopting an employer's calculation which does so, is a questionable technique.

The Board has not proven that Hanover's handling of seasonal worker cases (which generally are referred to legal counsel), treatment of vacation weeks, and submission of comparable employee's wages were questionable techniques. While Hanover's adjusters made some errors in applying the compensation rate tables, such as "rounding up" instead of rounding to the nearest dollar and selecting the wrong number of dependants, these are examples of inaccurate though not "questionable" techniques.

C. Quality control

The AIU identified several techniques such as "quality control monitoring processes," "importance of consistency of approach," "tracking and verifying the timeliness of first payments and submissions of MOPS and NOCS," "self audit procedures," "tracking claims handling information" and "use of a compliance manual." The AIU contends that the sheer volume of errors identified in the audited files reflects Hanover's lack of appropriate systems for assuring its compliance with the Act.

The AIU has failed to sustain its burden of proof in this regard. While Hanover's numerous claims handling errors may suggest that its procedures in 1998 were imprecise, imperfect, or even sloppy, there is no evidence of a questionable claims handling technique with regard to quality control.

Since the audit and implementation of the corrective action plan, Hanover has conducted training sessions, developed written materials for adjusters, and instituted a self-auditing program.

However, correcting or improving upon past practices is not evidence that the past practices were "questionable".

IV. Penalty

Based on the above, I find that Hanover's longstanding reliance on a computer program which generated late and inaccurate filings, failure to monitor its insureds' compliance with filing requirements, and inappropriate calculation of employees' average weekly wages constitute a pattern of questionable claims handling techniques in violation of 39-A M.R.S.A. §359(2).

Section 359(2) authorizes the Board to assess civil penalties "not to exceed \$10,000" when an insurer has engaged in a pattern of questionable claims handling techniques. Thus, the maximum penalty for either a pattern of questionable claims handling techniques (as in this case) or for repeated unreasonably contested claims (not at issue in this case) is \$10,000.

In determining the appropriate penalty in this case, I have considered a number of factors, including the harm to employees and to the workers' compensation system caused by Hanover's pattern of conduct, the extent and duration of the questionable techniques, and Hanover's performance relative to other insurers at the time.

Injured workers suffered little or no monetary loss due to Hanover's questionable techniques. However, untimely and inaccurate WCB-11s caused some employees confusion, as the benefits reported did not match the benefits actually received. The faulty WCB-11 computer program was a widespread problem that lasted for years. Despite Hanover's awareness of the problem as early as 1994, the problem was not remedied until 2000. This caused an administrative burden to Board staff and made it difficult for the Board to monitor injured workers' receipt of benefits.

There was considerable evidence regarding Hanover's compliance performance relative to other audited entities. While this evidence is irrelevant regarding whether Hanover engaged in a pattern of questionable claims handling techniques, it is relevant in determining the appropriate penalty for Hanover's violation of §359(2). The one insurer which has entered into a consent decree admitting a violation of §359(2) used estimated wages to determine benefits, completely failed to file WCB-2s, WCB-2As, WCB-4s or WCB-11s for any of its 18 indemnity claims, and made most of its indemnity payments late. Other insurers which were not referred for penalties under §359(2) (based in part on the MAE program's limited resources at the time) had worse compliance levels than Hanover or engaged in more egregious practices (such as using Massachusetts law rather than Maine law in adjusting Maine workers' compensation claims).

Because Hanover's practices did not cause monetary harm to employees and were not as egregious as some practices engaged in by other insurers, I do not believe the maximum penalty is warranted. The volume of untimely and inaccurate filings and the length of time Hanover required to correct the WCB-11 problem suggest the minimum penalty also is not warranted. Therefore, a civil penalty of \$5,000.00 is appropriate in this case.

V. Certification to Bureau of Insurance

As required by §359(2), I hereby certify these findings to the Superintendent of Insurance. This certification is required to allow the Superintendent of Insurance to "take appropriate action so as to bring such practices to a halt". In this case, Hanover already has taken appropriate action to correct its questionable claims handling techniques, including fixing the computer program used to generate WCB-11s, providing enhanced training for adjusters (including training on average weekly wage calculations) and improving its compliance to exceed benchmarks established by the Board. Thus, while certification to the Bureau of Insurance is mandatory under §359(2), and the

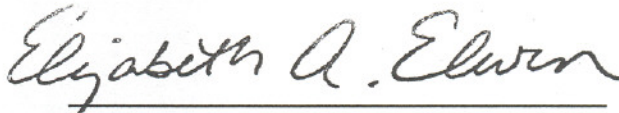
Superintendent of Insurance has the responsibility to take appropriate action, I do not believe that Hanover's pattern of questionable claims handling techniques is an ongoing one.

WHEREFORE, Hanover is ordered to pay a civil penalty of \$5,000.00 for engaging in a pattern of questionable claims handling techniques under 39-A M.R.S.A. §359(2).

SO ORDERED.

Dated: 12/31/02
Augusta, Maine

WORKERS' COMPENSATION BOARD



ELIZABETH A. ELWIN
Hearing Officer

PURSUANT TO BOARD RULE CHAPTER 12, §19 ALL EVIDENCE AND TRANSCRIPTS IN THIS MATTER WILL BE DESTROYED IN 60 DAYS UNLESS (1) WE RECEIVE WRITTEN NOTIFICATION THAT ONE OR BOTH PARTIES WISH TO HAVE THEIR EXHIBITS RETURNED TO THEM OR (2) A PETITION FOR APPELLATE REVIEW IS FILED. THE 60 DAYS WILL NOT BEGIN TO RUN UNTIL ALL POST-DECREE MOTIONS HAVE BEEN DECIDED OR OTHERWISE DISPOSED.

APPENDIX A

AIU EXHIBITS

1. 3/2/99 Board Meeting Agenda & 2/17/99 Memo from Steven Minkowsky to Board
2. 1/11/00 Memo from Steven Minkowsky to Executive Director Paul Dionne w/outline of audit process
3. Audit schedule
4. 6/12/01 memo from Steven Minkowsky to Executive Director Paul Dionne w/attachments
5. **[not received:** Complaint for Audit by Donna Cummings]
6. **[not received:** 12/20/94 letter from Steven Minkowsky to claims manager Lee Cyr]
7. 1/18/01 referral & spreadsheet [demonstrative exhibit]
8. Pilot audit project report
9. Packet of correspondence between Board & Hanover regarding audit
10. Audit report w/earlier spreadsheet attached - 11/7/00
11. Audit work papers for employees 1, 2, 3 & 6
12. Pages of spreadsheet for employees 1, 2, 3, 6
13. Work papers for employees 7, 17, 32, 33, 47, 49, 52, 75, 83 & 98
14. Lag spreadsheet [demonstrative exhibit]
15. Box of audit work papers
16. WCC-4 Form
17. Packet of letters from Steven Minkowsky to Lee Cyr
18. 2 letters from Steven Minkowsky to Lee Cyr
19. Steven Minkowsky's 12/12/95 letter to Lee Cyr
20. Marlene Swift's 6/17/97 memo to Lee Cyr

21. 6/1/02 letter from Attorney Muir to Attorney Collier re consent agreement negotiations
22. Attorney Muir's 6/17/02 letter to Attorney Collier
23. Attorney Muir's 8/22/02 letter to Paul Dionne
24. Attorney Collier's 8/27/02 letter to Attorney Muir
25. Paul Dionne's 8/27/02 letter to Attorney Muir
26. Attorney William Cahill's 9/12/02 letter to Attorney Collier
27. Attorney Collier's 9/18/02 letter to Attorney Muir

HANOVER EXHIBITS

1. Eve Alexis's 3/2/00 letter to Marlene Swift with attachments
2. Eve Alexis's 3/28/00 letter to Marlene Swift with attachments
3. Attorney Muir's 10/10/00 letter to Steven Minkowsky
4. Attorney Muir's 9/15/00 letter to Steven Minkowsky
5. Attorney Muir's 7/19/00 Response to Audit addressed to Michael Nadeau
6. 1999 Compliance Report –Final
7. 2000 Compliance Report –Final
8. 2001 and 1st 2 quarters of 2002 Compliance Report - Draft
9. Recommendations for high compliance referral & 8/30/01 memo from Steven Minkowsky to Executive Director Paul Dionne
10. Attorney Collier's 2/2/00 memo to Michael Nadeau
11. Protocols & Board minutes approving them
12. Board minutes 1/5/99 adopting Coopers & Lybrand report
13. Coopers & Lybrand report
14. [other entity audit reports received as Stipulated Document #2]
15. MAE Report 6/2/98
16. Forms Manual
17. Audit Report spreadsheet guide
18. Zurich U.S. Corrective Action Plan
19. Royal/Sun Alliance Corrective Action Plan
20. Audit Division standard operating procedures-10/19/02
21. Chart of compliance by other insurers from Board publications [demonstrative exhibit]

22. 4/25/97 memo from Steven Minkowsky to Paul Dionne re compliance
23. Minutes of 5/16/00 Board meeting
24. P. C13 from 2/02 "Troika Report" - percentage market share for 10 top insurers
25. Internal Operating Manual 6/15/95
26. 3 pp. from Coopers & Lybrand final report re dispute prevention program
27. 12/98 WC Alert
28. 2 pp. Draft Consent Decree proposed by Hanover
29. 9/11/02 letter from Attorney Collier to Attorney Muir w/draft Consent Decree
30. 6/17/02 letter from Attorney Collier to Attorney Muir
31. 9/6/02 letter from Attorney William Cahill to Attorney Collier
32. 9/9/02 letter from Attorney Muir to Attorney Collier
33. 9/13/02 letter from Attorney Collier to Attorney Muir with attachments
34. 9/11/02 letter from Steven Minkowsky to Eve Alexis with complaint for audit attachments
35. 9/13/02 letter from Eve Alexis to Steven Minkowsky
36. 9/23/02 letter from Steven Minkowsky to Eve Alexis
37. **[not received:** 10/7/92 letter from Sherill Creamer to Angela Mastrovphos]
38. **[not received:** 10/1/02 response letter from Angela Mastrovphos to Sherrill Creamer]
39. Preliminary Audit Report 4/28/00
40. 4 pg form letter to insured who doesn't file timely notice of injury and First Report

STIPULATED EXHIBITS

1. Attorney Collier's 7/25/02 letter to Attorney Muir with attachments
2. Other insurers' audit reports (with summary sheet)